

# HOUSE BILL REPORT

## HB 2728

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**As Passed House:**

February 12, 2008

**Title:** An act relating to requiring sex offender registration for misdemeanor and gross misdemeanor-level indecent exposure when there has been a finding of sexual motivation.

**Brief Description:** Requiring sex offender registration for misdemeanor and gross misdemeanor-level indecent exposure when there has been a finding of sexual motivation.

**Sponsors:** By Representatives Eddy, McDonald, Ericks, Warnick, Liias, Walsh, Schindler, Loomis, Hurst, Morrell, Kenney, Williams, Simpson, VanDeWege, O'Brien and Kelley.

**Brief History:**

**Committee Activity:**

Public Safety & Emergency Preparedness: 1/24/08 [DP].

**Floor Activity:**

Passed House: 2/12/08, 97-0.

**Brief Summary of Bill**

- Requires registration for persons convicted of misdemeanor or gross misdemeanor-level Indecent Exposure with sexual motivation.

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### HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

**Majority Report:** Do pass. Signed by 7 members: Representatives O'Brien, Chair; Hurst, Vice Chair; Pearson, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Ahern, Goodman and Kirby.

**Staff:** Jim Morishima (786-7191).

**Background:**

I. Indecent Exposure

A person commits Indecent Exposure if he or she intentionally makes any open and obscene exposure of his or her person, or the person of another, knowing that the conduct is likely to cause reasonable affront or alarm. Indecent exposure is:

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

- a class C felony if the perpetrator has a prior conviction for Indecent Exposure or a sex offense;
- a gross misdemeanor on the first offense if the perpetrator exposes himself or herself to a child under the age of 14; and
- a misdemeanor in all other circumstances.

## II. Sex Offender Registration

Under the Community Protection Act of 1990, a person convicted of a sex offense must register with the county sheriff of the county in which he or she resides. The offender must provide a variety of information upon registration including name, complete residential address, date and place of birth, place of employment, crime of conviction, date and place of conviction, aliases, Social Security number, photograph, and fingerprints.

Sex offenses that trigger an offender's duty to register include any felony committed with sexual motivation, including felony-level Indecent Exposure with sexual motivation. The determination of whether an offense is committed with sexual motivation is made by special allegation, which is filed by the prosecuting attorney. Once the special allegation has been made, the prosecutor has the burden of proving that the offense was committed with sexual motivation beyond a reasonable doubt to a jury (or to a judge if a jury is waived). The prosecutor may not withdraw the special allegation without the permission of the court.

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### **Summary of Bill:**

A person convicted of misdemeanor or gross misdemeanor-level Indecent Exposure with sexual motivation must register as a sex offender. The determination of whether an offense is committed with sexual motivation is made by special allegation, which is filed by the prosecuting attorney. Once the special allegation has been made, the prosecutor has the burden of proving that the offense was committed with sexual motivation beyond a reasonable doubt to a jury (or to a judge if a jury is waived). The prosecutor may not withdraw the special allegation without the permission of the court.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

### **Staff Summary of Public Testimony:**

(In support) This bill closes a loophole in current law. Currently, sexually motivated Indecent Exposure against a minor is only a gross misdemeanor. This means that an offender is not subject to any restrictions outside his or her sentence such as employment restrictions or

registration. Indecent Exposure with sexual motivation against a child is a crime of escalation and should therefore not be minimized.

(Opposed) This bill may have unintended consequences. This is a highly emotionally charged issue. This bill casts too broad a net. We already have a lot of laws dealing with sex offenses. This bill brings this issue into the crime of Indecent Exposure, which may result in defendants who are guilty of more serious crimes pleading down to Indecent Exposure. Committing Indecent Exposure in the manner covered by the bill should be its own sex offense.

**Persons Testifying:** (In support) Representative Eddy, prime sponsor; and Paula Birchler, Washington Communities Against Predators.

(Opposed) Howard Williamson, Naturist Action Committee.

**Persons Signed In To Testify But Not Testifying:** None.